

## **REMARKS**

By the *Office Action* of 28 December 2007 marked final, Claims 1-17 and 21 are pending in the Application, and all rejected. Applicant and Applicant's counsel thank the Examiner with appreciation for the careful examination.

No new matter is believed introduced by the present *Response and Amendment*. It is respectfully submitted that the present Application is in condition for allowance for the following reasons.

### **1. MPEP § 713.04 Interview Summary**

Applicant thanks the Examiner with appreciation for the 25 March 2008 telephone interview. Examiner Bernard Rojas and the undersigned participated in the interview. Claim rejections were discussed during the interview. The Examiner clarified rejections made in the *Office Action* of 28 December 2007 relating to the lack of a positive limitation with respect to the three positions of the actuator recited in Applicant's claims. Applicant indicated that amendments would be made to the claims to more clearly identify the invention. If for any reason the Examiner does not consider the foregoing record complete and accurate, the Examiner is respectfully requested to contact the undersigned.

### **2. Rejection Of Claim 1 Under 35 USC § 103**

The Examiner rejects Claim 1 under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 5,029,805 to Albarda et al. in view of U.S. Patent Publication No. 2006/0044088 to Vaitkus et al. Applicant respectfully traverses this rejection, because this combination of references does not obviate the actuator now recited in amended Claim 1.

The Examiner states that Albarda et al. discloses a valve arrangement in which a membrane is capable of *moving* between a first position, a second position, and an intermediate position. More particularly, the Examiner states that when "Albarda et al. is switched on and off, it passes through an intermediate position which allows partial fluid flow." (*Office Action*, p. 5). In switching from the "on" position to the "off" position, the Examiner contends that the of Albarda et al. valve moves through an intermediate position. Additionally, the Examiner indicates that the recitation that the actuator is "capable of" moving through three positions is not a positive limitation requiring the valve to have the ability to be stable in three positions.

In an effort to more clearly define the invention, Applicant has amended Claim 1 to include a specific and positive limitation for a membrane that "**can stabilize in** a first position, a

second position, and an intermediate position.” (Claim 1). Therefore, the actuator recited in Claim 1 must not only be able maintain an open and a closed position, but must also be able maintain an intermediate position, unlike the devices disclosed in the cited references.

Neither of the cited references alone, nor their combination, anticipate, disclose, teach, or suggest the actuator recited in Applicant’s amended Claim 1. Thus, it is respectfully submitted that Claim 1 is allowable, and all claims depending on Claim 1, Claims 2-11, are also allowable.

### **3. Rejection Of Claims 1-7 and 10-17 Under 35 USC § 103**

The Examiner rejects Claims 1-7 and 10-17 under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 6,123,316 to Biegelsen et al. in view of Albarda et al., and further in view of Vaitkus et al. Applicant respectfully traverses this rejection, because this combination of references does not obviate the actuator now recited in amended Claims 1 and amended Claim 12.

Similar to Claim 1, Applicant has amended Claim 12 in an effort to more clearly define the invention to include a specific and positive limitation for a membrane that “**can stabilize in** a first position, a second position, and an intermediate position.” (Claim 12). Therefore, the actuator recited in Claim 12 must not only be able maintain an open and a closed position, but must also be able maintain an intermediate position, unlike the devices disclosed in the cited references.

Neither the cited references, alone, nor their combination, anticipate, disclose, teach, or suggest what Applicant claims herein. Thus, it is respectfully submitted that Claims 1 and 12 are allowable, and all claims depending on Claims 1 and 12, Claims 2-11 and 13-17, are also allowable.

### **4. Rejection Of Claims 8-9, 14-17, and 21 Under 35 USC § 103**

The Examiner rejects Claims 8-9, 14-17, and 21 under 35 U.S.C. §103(a) as being obvious over Biegelsen et al. in view U.S. Patent No. 5,475,353 to Roshen et al. Applicant respectfully traverses this rejection, because this combination of references does not obviate the actuator now recited in amended Claims 1, 12, and 21.

Similar to Claims 1 and 12, Applicant has amended Claim 21 in an effort to more clearly define the invention to include a specific and positive limitation for a membrane that “**can stabilize in** a first position, a second position, and an intermediate position.” (Claim 21). Therefore, the actuator recited in Claims 1, 12, and 21 must not only be able maintain an open

and a closed position, but must also be able maintain an intermediate position, unlike the devices disclosed in the cited references. None of the cited art provides motivation to provide what the Applicant claims herein. Accordingly, independent Claims 1, 12, and 21 are allowable, and all claims depending from these independent claims are also allowable.

**5. Fees**

No Claim fees are believed due. The number of Claims pending remains less than those filed. Further, this *Response* is being filed within three months of the *Office Action*. Thus, it is believed no extension of time fees are due. Nonetheless, should any fees be due, authorization to charge deposit account No. 20-1507 is hereby given.

## **CONCLUSION**

By the present *Response and Amendment*, the Application has been in placed in full condition for allowance. Accordingly, Applicant respectfully requests early and favorable action. Should the Examiner have any further questions or reservations, the Examiner is invited to telephone the undersigned Attorney at 404.885.3695.

Respectfully submitted,

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I hereby certify that this correspondence is being submitted by e-filing to the US Patent and Trademark Office in accordance with §1.8 on this date via the EFS-Web electronic filing system.

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